THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 13th October, 2006

W.P.No.918 of 2003

Between:

B. Narasing Rao … Petitioner

and

The Collector (Civil Supplies)
Medak at Sanga Reddy
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.918 of 2003

ORAL ORDER:

Heard both sides.

This Writ Petition is filed seeking a Mandamus declaring the Order dated 9-1-2003 issued in Proceedings No.CSE/248/2002 by the 1st respondent as arbitrary, illegal and violative of provisions of the Andhra Pradesh Petroleum Products (Licensing & Regulation of Supplies) Order,1980 (for short 'the Order').

The point that arises for consideration in this Writ Petition is as to whether the impugned suspension Order under Clause 28(2) of the Order could have been issued without initiating any proceedings under the Control Orders ?

After filing the counter affidavit, this Court passed an interim order on 10-4-2003 as under:

> "As on the date of suspending the licence of the petitioner, no proceedings were initiated against him.
>
> In the counter affidavit it is stated that the petitioner was issued charge memo subsequent to the issuance of the order of suspension. Learned Government Pleader for Civil Supplies relies upon a Judgment reported in **MANIKESWARI AGENCIES v. JOINT COLLECTOR, R.R.DIST** {2001 (2) ALT 552} and contends that even if no charge memo was issued before issuing the order of suspension, subsequent issuance of charge memo could cure the defect. A Division Bench of this Court in W.P.No.19557 of 1997, however, took a view that such a step would not validate the defect.
>
> In that view of the matter, there shall be suspension of

the proceedings dated 9-1-2003, pending disposal of the Writ Petition. Notice."

In Writ Petition No.19557 of 1997 (**A. SRIRAMA MURTHY v. JOINT COLLECTOR, VISAKHAPATNAM –** 1999(1) LS 89) this Court held as under:

> "**4.** For invocation of the power of interim suspension under clause 28(2) of the Order, action ought to have been initiated by 5-8-1997 and before passing the order of interim suspension. It is pertinent to mention that the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order is a disabling law insofar as the licensee is concerned and all disabling laws have to be construed strictly and wherever there is any doubt or ambiguity, that should necessarily go in favour of the licensees. We cannot accept a contention that though initially an order was passed without jurisdiction, it should be treated as valid merely because at a later point of time that too after filing of the Writ Petition, the defect was sought to be rectified. As there was no action initiated as on 5-8-1997, the impugned order is without jurisdiction and is accordingly set aside. However, this will not preclude the authorities from initiating fresh action under clause 28(2) of the Order, if they feel necessary."

However, learned Government Pleader relied upon a reported Judgment in **GUMMADISETTI v. JOINT COLLECTOR, KHAMMAM**[1], wherein it was held that action under clause 28(2) of the Order can be simultaneously taken along with the action under sub-clause (1) of Clause 28 of the Order and it cannot be said that unless notice is first issued to the licensee with regard to initiation of enquiry, order of suspension cannot be issued. This Judgment stands on a different footing and it dealt with the question as to whether Clause 28(2) of the Order is attracted or not, when the Orders were passed simultaneously. It was held in the said case that Orders can be passed simultaneously. There cannot be any dispute about this proposition.

I am of the opinion, in view of the decision of the Division Bench

in Writ Petition No.19557 of 1997, there is no other course left except to allow the Writ Petition, since in the counter affidavit it is stated that at the time of suspension of the licence under Clause 28(2) of the Order on 9-1-2003, no show cause notice was issued. However, but subsequently a show cause notice dated 2-2-2003 was issued, i.e., after more than 23 days; therefore, by subsequent action, the impugned order cannot be said to be valid. In the circumstances, I am of the opinion that the issuance of charge memo subsequent to the issuance of the order of suspension cannot cure the defect. As such, the impugned Order is liable to be set aside and is accordingly set aside.

The Writ Petition is, therefore, allowed. No order as to costs.

13-10-2006

prk

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[1] 2004(1) ALD 535